

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 202106129	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 8:15 PM	Location of Incident: West Side Highway at Battery Place	Precinct: 01	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 06/26/2020 3:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/26/2020 3:28 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christopher Schmidt	00000	907284	SRG 1
2. PO Franz Zabala	08624	939730	SRG 1
3. PO Vicente Cardenas	00840	959532	SRG 4
4. Officers			
5. SGT Joseph Carlsen	01940	951586	SRG 1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Raymond Barrett	08126	952444	SRG 2
2. PO David Cardona	16573	960324	SRG 4
3. CPT Julio Delgado	00000	918927	SRG 2
4. PO Patrick Connolly	12224	930038	SRG 3
5. PO Michael Pascale	30095	956153	SRG 3
6. SGT Chet Wakie	05486	939670	T.A.R.U
7. DI James Mcgeown	00000	889041	SRG
8. DT3 Mike Civil	02114	935092	GVSD Z1
9. DT3 Carlos Velez	05575	919817	GVSD Z1
10. DT3 Christopher Vickery	07174	945079	DB GVSD
11. PO Jhunaissy Hidalgo	12852	951820	043 PCT
12. SGT Ray Soriano	00701	956275	PA UPTU
13. PO Robert Harrington	30008	965171	040 PCT
14. PO Jonathan Ku	01199	951890	SRG 4
15. SGT Irene Bonicadelgado	02352	938343	100 PCT
16. DT3 Eric Yeung	00699	941257	VED ZN2
17. PO Adam Muniz	31861	955234	SRG 1
18. PO Eduardo Mejia	10215	960929	SRG 1
19. PO Harvey Rabel	18646	937321	SRG 3
20. LT CD William Buchanan	00000	924993	DET BUR
21. SGT Daniel Nicoletti	05379	942271	F S S
22. DT3 Anthony Fernandez	02026	950401	VED ZN2
23. PO Crystal Washington	20523	968187	040 PCT

<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
24. SGT Richard Guerrieri	01567	948039	SRG 5
25. PO Jose Colon	20734	931603	SRG 2
26. SGT David Lamarre	03547	947929	SRG 3
27. CPT Ronald Ramos	00000	935562	SRG 4
28. SGT Elliot Zinstein	05494	947634	TRN BUR
29. SGT Randy Figuereo	04844	941750	032 PCT
30. DI Ronald Zedalis	00000	927702	C S O
31. LT Peter Sotiriou	00000	924515	SRG 3
32. DT3 Christian Villacis	05498	949772	GVSD Z1
33. INSP Gerard Dowling	00000	915640	SRG
34. PO Lilian Lozada	20533	962917	M E L D
35. SGT Joel Polanco	04089	953261	040 PCT
36. DT3 Jason Ragoo	07277	939268	DET BUR
37. DT3 John Mchugh	00581	948163	GVSD Z1
38. DT3 Michael Harkins	00219	955974	GVSD Z1

<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>
A.PO Franz Zabala	Force: Police Officer Franz Zabala struck § 87(2)(b) with a baton.	
B.LT Christopher Schmidt	Force: Lieutenant Christopher Schmidt used physical force against § 87(2)(b)	
C.PO Franz Zabala	Force: Police Officer Franz Zabala used physical force against § 87(2)(b)	
D.PO Vicente Cardenas	Force: Police Officer Vicente Cardenas struck § 87(2)(b) with a baton.	
E.PO Vicente Cardenas	Force: Police Officer Vicente Cardenas used physical force against § 87(2)(b)	
F.SGT Joseph Carlsen	Force: Sergeant Joseph Carlsen used physical force against § 87(2)(b)	
G. Officers	Force: Officers used physical force against § 87(2)(b)	
H.LT Christopher Schmidt	Discourtesy: Lieutenant Christopher Schmidt spoke discourteously to § 87(2)(b)	

### Case Summary

On June 26, 2020, § 87(2)(b) filed this complaint on behalf of § 87(2)(b) with the CCRB by phone. This case was spun-off from CCRB case 202003978.

On June 2, 2020, at approximately 8:15 p.m., at West Street and Battery Place in Manhattan, § 87(2)(b) was taking part in a protest in honor of Black Trans Lives. Officers, including Lieutenant Christopher Schmidt, Sgt. Joseph Carlsen, PO Franz Zabala, of SRG 1, PO Vicente Cardenas and PO David Cardona, of SRG 4, and Captain Julio Delgado and PO Raymond Barrett, of SRG 2, formed a line and told people to disperse pursuant a mayoral curfew that went into effect at 8 p.m. § 87(2)(b) did not think the officers would arrest him, so he approached the line of officers and refused to move as they approached. PO Zabala pushed § 87(2)(b) back with his baton approximately one to two feet (**Allegation A: Force – Nightstick as club (incl asp & baton)**, § 87(2)(g)). Lieutenant Schmidt then pulled § 87(2)(b) to the ground (**Allegation B: Force – Physical Force**, § 87(2)(g)) and, with the help of PO Zabala (subsumed under **allegation A**; **Allegation C: Force – Physical Force**, § 87(2)(g)), PO Cardenas, who was also holding a baton (**Allegation D: Force – Nightstick as club (incl asp & baton)**, § 87(2)(g)); **Allegation E: Force – Physical Force**, § 87(2)(g)), Sgt. Carlsen, and other officers (**Allegations F and G: Force – Physical Force**, § 87(2)(g)) placed § 87(2)(b) into zip-ties. As Lieutenant Schmidt was doing this, he told § 87(2)(b) “Don’t fight, asshole. Give me your hand,” and, “Don’t fight me. Just give me your fucking hand.” (**Allegation H: Discourtesy – Word**, § 87(2)(g)). Once § 87(2)(b) was in zip ties, Sgt. Carlsen and PO Cardenas lifted him by the biceps into a standing position (subsumed under **allegations E and F**). PO Cardenas and Sgt. Carlsen then walked with § 87(2)(b) to the sidewalk and later processed his arrest (**BR 01**).

§ 87(2)(b) provided cell phone footage of this incident (**BR 02 and BR 75**). Body worn camera footage was obtained from Lieutenant Schmidt (**BR 03 and BR 04**), PO Cardenas (**BR 05 and BR 06**), PO Zabala (**BR 07 and BR 08**), PO Raymond Barrett (**BR 09 and BR 10**), PO Patrick Connolly (**BR 11, BR 12, BR 13, BR 14, BR 15, and BR 16**), PO Michael Pascale (**BR 17 and BR 18**), PO Adam Muniz (**BR 19 and BR 20**), PO Harvey Rabel (**BR 21 and BR 22**), PO Roberto Feliciano (**BR 23 and BR 24**), PO Jonathan Ku (**BR 25 and BR 26**), PO Eduardo Mejia (**BR 27 and BR 28**), PO Crystal Washington (**BR 29 and BR 30**), Sgt. Elliot Zinstein (**BR 31 and BR 32**), PO David Cardona (**BR 33 and BR 34**), PO Jhunaissy Hidalgo (**BR 35, BR 36, and BR 37**), Lieutenant Peter Sotiriou (**BR 38 and BR 39**), Sgt. David Lamerre (**BR 40, BR 41, BR 42, and BR 43**). The relevant videos are discussed below.

§ 87(2)(b) was arrested as a result of this incident (**BR 01**), and § 87(2)(b) received a summons (**BR 74**). There was no additional video of this incident.

This case was added to the sensitive case list on June 11, 2020, due to media coverage of the incident (**BR 44 and BR 45**).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Franz Zabala struck § 87(2)(b) with a baton.**

**Allegation (B) Force: Lieutenant Christopher Schmidt used physical force against § 87(2)(b).**

**Allegation (C) Force: Police Officer Franz Zabala used physical force against § 87(2)(b).**

**Allegation (D) Force: Police Officer Vicente Cardenas struck § 87(2)(b) with a baton.**

**Allegation (E) Force: Police Officer Vicente Cardenas used physical force against § 87(2)(b).**

**Allegation (F) Force: Sergeant Joseph Carlsen used physical force against § 87(2)(b).**

**Allegation (G) Force: Officers used physical force against § 87(2)(b).**

**Allegation (H) Discourtesy: Lieutenant Christopher Schmidt spoke discourteously to § 87(2)(b).**

It was undisputed that on June 2, 2020, at approximately 8:15 p.m., at Battery Place at West Street in Manhattan, PO Zabala, pushed § 87(2)(b) with his baton, that Lieutenant Schmidt, PO



torsos. § 87(2)(b) walked southbound toward the officers, while the line of officers moved northbound while yelling, “Move back!” Many people in the protest complied and walked away from the officers. However, § 87(2)(b) either refused to move or did not move fast enough, and, as the line of officers reached him, Lieutenant Schmidt grabbed § 87(2)(b) took him to the ground, and arrested him. § 87(2)(b) could not recall further details of this interaction, but he filmed this portion of the incident with his cell phone (**BR 02**).

Lieutenant Schmidt (**BR 48**) stated that he arrived at Battery Place shortly after 8:00 p.m. and was equipped with a helmet (Lieutenant Schmidt’s personal helmet had been damaged, so he was using Captain Ronald Ramos’ helmet) and a straight baton. Lieutenant Schmidt saw a large crowd of several hundred people on the northbound side of West Street marching southbound and chanting. Besides violating the 8 p.m. curfew and blocking traffic, the people in the crowd were not committing any violations and were not violent. Lieutenant Schmidt and other officers in his detail crossed to the center of the street, where Lieutenant Schmidt met up with Captain Delgado, who confirmed with Lieutenant Schmidt that the people in the crowd were in violation of the 8 p.m. curfew and were blocking traffic. Captain Delgado then told Lieutenant Schmidt to start making arrests and that “no warnings” were needed.

After speaking with Captain Delgado, Lieutenant Schmidt told a group of officers and sergeants – he was not sure who or how many – to form a line behind him on the north side of the base of West Street, with Lieutenant Schmidt in the center and the other officers and sergeants behind him and to the side of him. Lieutenant Schmidt did not give any instructions to any of the officers about affecting arrests or the manner in which they should interact with the people in the crowd. Having formed the line, Lieutenant Schmidt told the sergeants with him, “Let’s go!” Lieutenant Schmidt and the other officers then started to walk northbound on West Street toward the crowd of people while verbally giving instructions to disperse. While he did this, Lieutenant Schmidt thought that he was holding his baton with both his hands on either end horizontally across his body. The line of officers moved slowly because Lieutenant Schmidt wanted to give people a chance to disperse and to move out of the street to the sidewalks.

After moving a few feet northbound toward the crowd of people, Lieutenant Schmidt saw that the crowd of people was moving backwards away from the officers and that people were starting to disperse, so Lieutenant Schmidt halted the line of officers to give people in the crowd more time to clear the area. However, when the officers stopped moving northbound, some people in the crowd who had been dispersing, stopped moving and stood stationary in the street opposite the officers. There were “several feet” between these people and the officers, but Lieutenant Schmidt could not estimate how many. Two of these people, § 87(2)(b) and an unidentified female, walked southbound within an arm’s length of the officers. Lieutenant Schmidt instructed the officers next to him, “Place him § 87(2)(b) under arrest! Place him § 87(2)(b) under arrest!” As he was saying this, Lieutenant Schmidt moved forward toward and tried to grab his torso to place him into custody, but Lieutenant Schmidt could not recall if he was able to grab him.

§ 87(2)(b) moved back away from Lieutenant Schmidt by a “few feet” – Lieutenant Schmidt could not recall how many – but Lieutenant Schmidt walked forward and grabbed § 87(2)(b) (Lieutenant Schmidt could not recall where on his body he grabbed § 87(2)(b)). Lieutenant Schmidt “wrestled” § 87(2)(b) to the ground, but he could not recall what movements he made to do this or where he was making physical contact with § 87(2)(b) but he noted that it was a “fluid” motion that happened quickly with them both going simultaneously to the ground. § 87(2)(b) was underneath Lieutenant Schmidt, who was in turn pinned under the body weight of other officers on top of him who were reaching for § 87(2)(b)’s hands. Lieutenant Schmidt could not recall § 87(2)(b)’s body position underneath him, nor could he recall how he was positioned over § 87(2)(b).

Lieutenant Schmidt gave verbal commands for § 87(2)(b) to give him his hands and tried to reach for his hands, but § 87(2)(b) pulled his hands away from Lieutenant Schmidt. As he was trying to get a hold of § 87(2)(b)’s hands, Lieutenant Schmidt held § 87(2)(b)’s

hair, which was approximately four to five inches long, on the side of § 87(2)(b)'s head by the ear down to the ground with his left hand to try to keep § 87(2)(b) in one place while he tried to grab § 87(2)(b)'s hands with his right hand. Lieutenant Schmidt was holding his bodyweight, and the weight of the officers on top of him, up by his left forearm, which was along the side of § 87(2)(b)'s head. Lieutenant Schmidt was not making any direct contact with § 87(2)(b)'s neck, nor was he applying any pressure to § 87(2)(b)'s back. § 87(2)(b) did not appear to have any difficulty breathing, and his only complaint was that Lieutenant Schmidt was pulling his hair.

One of the officers on top of Lieutenant Schmidt knocked Lieutenant Schmidt's helmet, which did not fit him properly as it belonged to Captain Ramos, forward such that it covered Lieutenant Schmidt's eyes. Lieutenant Schmidt could not see how § 87(2)(b) was moving underneath him but felt him pulling his arms away from him. After a few seconds, Lieutenant Schmidt and the other officers around him, he could not see who, were able to get § 87(2)(b) into zip ties. Although Lieutenant Schmidt was holding his straight baton in his left hand while trying to restrain § 87(2)(b), Lieutenant Schmidt denied ever striking § 87(2)(b) with his baton. Lieutenant Schmidt could not recall if he ever used profanity toward § 87(2)(b) or at any point during the incident.

Once he was in the zip ties, Lieutenant Schmidt helped § 87(2)(b) into a standing position by lifting him by the upper arms and body. Lieutenant Schmidt then walked with § 87(2)(b) to the sidewalk and assigned his arrest to PO Cardenas.

PO Ku (BR 49), Lieutenant William Buchanan (BR 50), PO Connolly (BR 51), Det. Mike Civil (BR 52), PO Pascale (BR 53), Det. Christian Villacis (BR 54), Det. Christopher Vickery (BR 55), Sgt. Daniel Nicoletti (BR 56), Deputy Inspector James McGeown (BR 57), PO Crystal Washington (BR 58), PO Eduardo Mejia (BR 59), PO Adam Muniz (BR 60), Deputy Inspector Ronald Zedalis (BR 61), Det. Carlos Velez (BR 62), Det. Jason Ragoo (BR 63), Inspector Gerard Dowling (BR 64), and Captain Ramos (BR 65) all stated that they were not present for this portion of the incident.

§ 87(2)(b) provided cell phone footage of the incident (BR 02 and BR 75). The video begins with a line of officers walking northbound on West Street toward people who are also walking northbound on West Street. At 00:04 seconds, Lieutenant Schmidt, is visible in the center of the frame wearing helmet number 5297 (Captain Ramos' former shield number). There are approximately 20 other officers on either side of Lieutenant Schmidt with PO Zabala to Lieutenant Schmidt's immediate left. The officers, all of whom are wearing helmets and most of whom are holding straight batons, continue to talk walk northbound while yelling to the crowd, "Move back!"

At 00:23 minutes, § 87(2)(b) and his unidentified friend walk toward the line of officers with their hands by their heads. § 87(2)(b) stands immediately in front of Lieutenant Schmidt and PO Zabala, and PO Zabala, while holding either end of his baton with both of his hands pushes forward with his baton, lightly hitting § 87(2)(b) in the chest with the horizontal edge of the baton. § 87(2)(b) takes one to two steps back. Lieutenant Schmidt wraps his right arm around § 87(2)(b)'s back, and § 87(2)(b) steps back away from Lieutenant Schmidt. Lieutenant Schmidt tells § 87(2)(b) "You're under arrest!" Lieutenant Schmidt and PO Cardenas follow § 87(2)(b) and, at 00:28 seconds, Lieutenant Schmidt wraps both of his arms around § 87(2)(b)'s upper body and shoulders. (At 0:28 seconds, Lieutenant Schmidt clarified that he was reaching for § 87(2)(b)'s shoulder and that he did not make any contact with his neck. § 87(2)(b) did not allege that Lieutenant Schmidt made contact with his neck.) § 87(2)(b) and Lieutenant Schmidt both go to the ground with PO Cardenas, who is holding his straight baton, but their positions on the ground are not captured. By 00:32 seconds, officers are on the ground surrounding § 87(2)(b) but he, Lieutenant Schmidt, PO Cardenas and the other officers are mostly obscured by the line of officers in front of the camera.

Body-worn camera footage from Lieutenant Schmidt (BR 03 and BR 04), PO Cardenas (BR 05 and BR 06), PO Barrett (BR 09 and BR 10) and PO Cardona (BR 33 and BR 34) captured

this portion of the incident. Lieutenant Schmidt's footage begins with him approaching West Street at Battery Place. At 1:04 minutes, Captain Delgado is leading a crowd of protestors marching southbound on West Street, and he instructs the officers to follow him. At 1:10 minutes, Captain Delgado says, "Lieutenants, get 'em up!" At 1:15 minutes, Lieutenant Schmidt asks Captain Delgado, "No dis-con? No warnings?" Captain Delgado responds, "Let's go. No dis-con. No warnings. We got 'em. Unlawful assembly. Everybody."

At 1:29 minutes, Lieutenant Schmidt and other officers yell for the officers to form a line in the street and onto the sidewalk, which they do at the base of West Street as the protestors walk onto the sidewalk toward Battery Place. By 1:42 minutes, the protestors have turned away from the line of officers and are walking in the opposite direction. At 1:46 minutes, the officers start to walk northbound following the protestors and yell, "Move back!" Protestors comply with walking away from the officers. At 2:08 minutes, Lieutenant Schmidt instructs the officers around him, "Halt!" and the officers stop walking. By 2:16 minutes, § 87(2)(b)'s friend, and another unidentified individual turn to face the officers and walk backwards slowly.

At 2:27 minutes, § 87(2)(b) and his friend walk forward toward the officers with their hands up by their heads. The officers all continue to yell, "Move back!" At 2:28 minutes, PO Zabala pushes § 87(2)(b) in the mid-chest with the horizontal edge of his baton. § 87(2)(b) takes one to two steps back, and Lieutenant Schmidt says, "Place him under arrest. Place him under arrest. You're under arrest." At 2:31 minutes, Lieutenant Schmidt reaches for § 87(2)(b) and his body-worn camera goes dark for a moment. At 2:33 minutes, Lieutenant Schmidt is grabbing § 87(2)(b)'s arm, and, as he takes § 87(2)(b) to the ground, he continues to say, "Place him under arrest." At 2:28 minutes, Lieutenant Schmidt says, "Don't fight! Don't fight!" However, it is not clear from this footage what § 87(2)(b) is doing. Lieutenant Schmidt's camera then disengages.

PO Cardona's body-worn camera footage (**BR 33** and **BR 34**) captures this portion of the incident from the beginning until 1:14 minutes and is consistent with that of Lieutenant Schmidt.

PO Cardenas' body-worn camera footage (**BR 05** and **BR 06**) captures this portion of the incident from the beginning until 4:09 minutes and is generally consistent with those of Lieutenant Schmidt and PO Cardona. The footage begins with § 87(2)(b) already on the ground and officers trying to take him into custody. Beginning at 00:43 seconds, Sgt. Carlsen is on the left side of the frame holding § 87(2)(b)'s left arm with PO Cardenas places the zip ties onto § 87(2)(b)'s wrists. At 1:07 minutes, Sgt. Carlson and PO Cardenas lift § 87(2)(b) by the upper body into a standing position and stand with him in the street. § 87(2)(b) complains that the zip-ties are too tight. At 1:30 minutes, § 87(2)(b) asks that the zip-ties be loosened, and an officer, it is not clear who, responds, "They don't get loose." § 87(2)(b) continues to complain about the zip-ties, and beginning at 4:09 minutes, an officer removes and replaces the zip-ties.

PO Barrett's body-worn camera footage (**BR 09** and **BR 10**) captures this portion of the incident from the beginning until 1:30 minutes and is generally consistent with those of Lieutenant Schmidt, PO Cardona, and PO Cardenas. At 00:50 seconds, Lieutenant Christopher Schmidt, who is holding the back of § 87(2)(b)'s shirt by the collar, pulls § 87(2)(b) to the ground. § 87(2)(b) falls on the right side of his body and immediately tries to stand up. Lieutenant Schmidt, a sergeant, and PO Vicente Cardenas try to grab § 87(2)(b)'s hands. At 00:55 seconds, Lieutenant Schmidt grabs the hair on the top of § 87(2)(b)'s head with both of his hands and holds § 87(2)(b)'s head down to the ground. Lieutenant Schmidt's straight baton, which had been in his left hand, is on the ground outside of his reach. § 87(2)(b) tries to sit up as Lieutenant Schmidt pulls him back to the ground by his hair. Lieutenant Schmidt tells § 87(2)(b) "Don't fight!" § 87(2)(b) responds, "Why are you pulling my hair?" An officer, it is not clear who, is holding onto § 87(2)(b)'s right wrist and there are other officers surrounding them. It is not clear, however, who is making contact with § 87(2)(b) and where. § 87(2)(b) says that the officers are hurting him, and Lieutenant Schmidt instructs him to give him his hand. By 1:03 minutes, Lieutenant Schmidt's helmet appears to be tilted forward such that the front may

be covering his eyes, however, only the back of Lieutenant Schmidt's head is visible. At 1:05 minutes, Lieutenant Schmidt says, "Don't fight, asshole. Give me your hand. Give me your hand and it's over." Lieutenant Schmidt continues to try to get § 87(2)(b)'s hand and, at 1:16 minutes, says, "Don't fight me. Just give me your fucking hand."

At 1:11 minutes, § 87(2)(b) is still on his right side with Lieutenant Schmidt leaning over him. At 1:16 minutes, an officer, it is not clear who, says, "Just give me your fucking hand." At 1:19 minutes, PO Barrett walks back to the unidentified female, who is already in zip ties with PO Cardona. PO Barrett returns to § 87(2)(b) at 1:24 minutes and walks past him toward the re-formed line of officers.

§ 87(2)(b) was arrested (**BR 01**) for § 87(2)(b) and PO Cardenas was his arresting officer.

Lieutenant Schmidt prepared a TRI (**BR 66**) regarding his use of force against § 87(2)(b) in which he noted that he used a forcible takedown, wrestling, and grappling to overcome active resistance against officers.

Emergency Executive Order No. 118 (**BR 67**), issued by Mayor Bill DeBlasio on June 1, 2020, established a city-wide curfew from 8:00 p.m. on June 2, 2020, until 5:00 a.m. on June 3, 2020, during which time no persons or vehicles were permitted in public. Exceptions to the executive order were police officers, peace officers, firefighters, first responders and emergency medical technicians, individuals travelling to and from essential work and performing essential work, people experiencing homelessness and without access to a viable shelter, and individuals seeking medical treatment or medical supplies.

It was undisputed that § 87(2)(b) was out after curfew and that rather than disperse from the area as directed by Lieutenant Schmidt and other officers, he approached officers and refused to move. PO Zabala pushed § 87(2)(b) back away from the officers with his baton, and, when § 87(2)(b) continued to refuse to leave the area, Lieutenant Schmidt took § 87(2)(b) to the ground and tried to take him into custody. § 87(2)(b) initially resisted the officers by pulling his arms away from them, and Lieutenant Schmidt, while reaching for § 87(2)(b)'s hands, held § 87(2)(b) who was trying to stand up, down to the ground by his hair and told him, "Don't fight, asshole. Give me your hand. Give me your hand and it's over" and, "Don't fight me. Just give me your fucking hand." It was also established that Lieutenant Schmidt was wearing Captain Ramos' helmet, and that while trying to take § 87(2)(b) into custody, the helmet slipped down over Lieutenant Schmidt's eyes, and at least partially obscured his vision. PO Cardenas eventually placed § 87(2)(b) into zip ties with the assistance of Sgt. Carlson and other officers, and PO Cardenas and Sgt. Carlson lifted § 87(2)(b) into a standing position. Ultimately, PO Cardenas processed § 87(2)(b)'s arrest.

Patrol Guide procedure 221-01 (**BR 68**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Patrol Guide Procedure 200-02 (**BR 69**) states that the department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect

In DAO-DCT Case Number: 2017-17276 (**BR 70**) the court held that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a



[illegible]

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 71**).
- Lieutenant Schmidt has been a member of service for 27 years and has been a subject in nine CCRB complaints and 21 allegations, two of which were substantiated.
  - 200202279 involved substantiated allegations of a frisk/search and a question. The Board recommended Command Discipline B, and the NYPD imposed Command Discipline B. § 87(2)(g)
- Sgt. Carlsen has been a member of service for nine years and has been a subject in four CCRB complaints and 10 allegations, none of which were substantiated. § 87(2)(g)
- PO Zabala has been a member of service for 16 years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Cardenas has been a member of service for six years and has been a subject in one CCRB complaint and four allegations, three of which were substantiated.
  - 201901322 involved substantiated allegations of an entry and search of a premises and a forcible removal to the hospital. The Board recommended Formalized Training, and the NYPD imposed Formalized Training.

- This complaint was not suitable for mediation.
- As of August 12, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 72**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**BR 73**).

Investigator:	<u>Maura R. R Roche</u> Signature	<u>S. I. Maura R. Roche</u> Print Title & Name	<u>10/22/2021</u> Date
Squad Leader:	<u>Eric Rigue</u>	IM Eric Rigue	10/27/2021

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date